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**BY HAND DELIVERY**

Ms. Donna R. Searcy,  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

ORIGINAL  
FILE

RE: Loral Qualcomm Satellite Services, Inc.,  
ET Docket No. 92-28 (File No. PP-32).

Dear Ms. Searcy:

Transmitted herewith for filing with the Commission in the above-referenced docket on behalf Loral Qualcomm Satellite Services, Inc., is an original and four copies of its "Reply Comments In Support Of AMSC's Application For Review of Protective Order."

Should there be any questions regarding this document, please communicate with this office.

Respectfully submitted,

*William D. Wallace* (KK10)  
William D. Wallace  
(Member of Florida Bar only)

Enclosures

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EX PARTE OR LATE FILED  
Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

In the matter of )  
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Motorola Satellite )  
Communications, Inc. )  
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In the Matters of: )  
 )  
Ellipsat Corporation )  
TRW, Inc. )  
Constellation Communications, Inc. )  
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On Request for Inspection of Records )  
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ET Docket No. 92-28  
PP-32

FOIA Control Nos.  
92-83, 92-88, 92-86

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

REPLY COMMENTS IN SUPPORT OF AMSC'S  
APPLICATION FOR REVIEW OF PROTECTIVE ORDER

Loral Qualcomm Satellite Services, Inc. ("LQSS"), by its attorneys, hereby files the following reply comments with respect to the "Opposition" of Motorola Satellite Communications, Inc. ("Motorola") filed in this matter on June 26, 1992. As an applicant for a low-earth orbit satellite system (File Nos. 19-DSS-P-91(48) and CSS-91-014) and a pioneer's preference in ET Docket No. 92-28 (File No. PP-31), LQSS is affected by the order for which review has been sought, and, therefore, has an interest in the outcome of this proceeding.

I. BACKGROUND.

In its Application, AMSC argues that use of the Protective Order (DA 92-674), released May 28, 1992, to govern access to Motorola's "confidential" material filed to support its request for pioneer's preference is simply unworkable.<sup>1/</sup> Pursuant to the

<sup>1/</sup> In its Application, AMSC also argues that a sufficient factual basis for the finding that certain material deserved confidential treatment was not stated. LQSS agrees and has argued that none of it merits confidential treatment. See Comments of Loral Qualcomm Satellite Services, Inc. on

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Order, access to the materials is limited to certain persons on a "need to know" basis, and those portions of pleadings discussing the materials must be filed under seal.

AMSC says that the Commission would, in effect, become a repository for trade secrets, and would have all the burdens associated with such a role, including evaluation, investigation, maintenance, distribution and enforcement. As AMSC points out, "[s]o substantial a burden on the Commission's processes outweighs the marginal benefit to be obtained by the consideration of additional evidence in support of requests for Pioneer's Preferences." AMSC Application, at 21. Moreover, the weaknesses inherent in this burdensome process, as ASMC notes, may "chill" innovators from disclosing techniques for improving communications systems, which is contrary to the purpose of the Commission's Rules for awarding a pioneer's preference. See Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services, 6 FCC Rcd 3488, 3490, ¶ 18 (1991).

II. AMSC HAS RAISED VALID CONCERNS WHICH COUNSEL AGAINST USE OF PROTECTIVE ORDERS FOR FILINGS LIKE MOTOROLA'S SUPPLEMENT.

The concerns raised by AMSC in its Application are valid. Creating a special system for access to and disclosure of portions of Motorola's Supplement has had a detrimental effect on parties filing comments on those materials, and may inhibit future evaluation of the requests for pioneer's preferences filed by the

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Motorola Supplemental Filing, at 15-16 (filed June 12, 1992).

In addition, AMSC pointed out that reviewing the documents under the protective order may expose a party to a potential trade misappropriation claim by Motorola. By choosing not to place itself in such a position, AMSC says it is effectively denied access to the Motorola materials. LQSS agreed to review the materials in accordance with the Protective Order, but has found that process not only burdensome but also not conducive to creation of a full and meaningful record.

five RDSS/LEO applicants (Constellation Communications, Inc.; Ellipsat Corporation; LQSS; Motorola; and TRW, Inc.) and the six pending applications for authorizations to use the RDSS spectrum.

As a result of limiting access to Motorola's material, the Commission may not have received as full and complete an evaluation of the data as it needs to make a judgment on Motorola's pioneer's preference request and its application.<sup>2/</sup> This is clearly contrary to the public interest.

Further, by limiting disclosure of the protected materials, the Commission has created a roadblock to fair, complete and reasoned rulemaking or other proceeding needed to act on the pending RDSS applications, including Motorola's. For example, if the Commission were to request comments on the technical standards to apply to the proposed RDSS systems, many interested parties who have previously filed comments on the applications<sup>3/</sup> -- but who are not "applicants" to whom the protected material was made available<sup>4/</sup> -- would not have complete information on Motorola's system, and therefore, would not be able fully to participate, in denigration of both their due process rights and the need for a full and accurate record. Indeed, because some parties would have

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<sup>2/</sup> For example, LQSS was forced to employ an engineering consultant to review the Motorola protected materials. Thus, the LQSS personnel most familiar with Motorola's application (and LQSS's and other applications) were unable to review this additional information. As a result, the analysis made available to the Commission with respect to Motorola's supplemental materials could not include critical input. Other applicants were similarly burdened in filing comments.

<sup>3/</sup> For example, Communications Satellite Corporation and Hughes Aircraft Company filed comments on the Motorola application on June 3, 1991.

<sup>4/</sup> See Protective Order, ¶ 3.

access to incomplete data, their analyses might be misleading or wrong, through no fault of their own.

Moreover, if the Commission were to propose a negotiated rulemaking among the six applicants for the RDSS bands, as it has done for the "Little LEOS,"<sup>5/</sup> and as various senior Commission members have publicly stated would be likely, discussions among the applicants would be hindered substantially by the inability of the persons bound by the Protective Order to discuss those aspects of Motorola's system revealed in the protected material, and by the fact some discussants had and could not review the material. Because AMSC has not agreed to be bound, presumably, its representatives would be required not to be present if the discussion turned to the protected data. Similarly, personnel from other applicants who are not covered by agreements to review the material would also have to be summarily dismissed from the negotiations. Such logistical problems would preclude full participation by certain parties in the negotiations, and doom the effectiveness of the procedure.

As AMSC points out, the marginal benefit achieved by accepting material subject to confidential treatment in this context is greatly outweighed by the burdens it imposes upon the parties and the Commission's processes, and by the denial of due process rights it would inevitably create. Acceptance in the record of such information is contrary to the public interest.

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<sup>5/</sup> See Public Notice (DA 92-443), CC Docket No. 92-76 (April 16, 1992).

### III. CONCLUSION.

In its Opposition, Motorola cavalierly claims that use of protective orders in this context will provide sufficient access to the "confidential" materials for both the Commission and interested parties. Motorola Opposition, at 14-15. As discussed in AMSC's Application, and these reply comments, confidential treatment of material in this context is simply unworkable. Limited access precludes full and fair evaluation and unduly burdens the parties and process, and tramples important rights.

Accordingly, the Commission should grant AMSC's Application for Review, dissolve the Protective Order, and require Motorola either to place its currently protected material in the public record or to withdraw the material from consideration in this docket.

Respectfully submitted,

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Dated: July 9, 1992

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 9th day of July, 1992, caused copies of the foregoing "Reply Comments In Support Of AMSC's Application For Review Of Protective Order" to be served by hand delivery (as indicated with \*) or by U.S. mail, postage prepaid, to the following:

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